

Interpretation of T.C.A. §§ 2-10-122, 2-10-125, and 2-10-126 with respect to the filing of a Sworn Disclosure of Consulting Services by a legislative employee who is a minority stockholder in a company that may contract with the state.

INTRODUCTION

The following Advisory Opinion is in response to a written inquiry from Ms. Helen H. James regarding the filing of a Sworn Disclosure of Consulting Services when a legislative employee is a minority stockholder in a company that may contract with the state of Tennessee.

Ms. James asks the following questions: (1) Is a legislative employee who is a minority stockholder in a company that may contract with the state, but who has no responsibilities for the company and receives no salary or fees from the company other than rent, performing “consulting services” under T.C.A. § 2-10-122 and, therefore, required to file a Sworn Disclosure of Consulting Services (“form SS-8006”) under T.C.A. § 2-10-126? and (2) Is a company that may contract with the state and in which a legislative employee has a minority share, but who has no management control over the company and receives no salary or fees from the company other than rent, required to file a form SS-8006 under T.C.A. § 2-10-125?

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes the following:

- (1) The definition of “consulting services” requires the legislative official to provide services to advise or assist the company in influencing legislative or administrative action or in obtaining or maintaining a contract with the state, and thus the mere ownership of a minority share in a company and the collection of rental fees from the company does not constitute “consulting services” and the legislative employee is not required to file a form SS-8006;
- (2) A legislative employee’s mere minority share in a company and the collection of rental fees from the company does not constitute “consulting services”, and thus the company is not providing compensation to the legislative employee for consulting services and is not required to file a form SS-8006.

BACKGROUND

Ms. James is an attorney who is employed by the Office of Legal Services of the Tennessee General Assembly. She primarily works with the Senate and House Education Committees and the Senate Finance, Ways and Means Committee. Ms. James states that she avoids working on or drafting legislation related to transportation.

Ms. James is a minority stockholder in a family-owned paving business that, from time-to-time, contracts with the state of Tennessee. Her brother is the operator and majority stockholder of the

company. Ms. James states that she has no contract with the company, performs no work for the company, and has no responsibilities with the company or control over the company. She further states that her brother does not ask her for advice or otherwise consult with her regarding the company. Ms. James states that she receives rent from the company as one of the company's landlords, but that she otherwise receives no compensation or dividends from the company.

DISCUSSION

(1) Is a legislative employee who is a minority stockholder in a company that may contract with the state, but who has no responsibilities for the company and receives no salary or fees from the company other than rent, performing "consulting services" under T.C.A. § 2-10-122 and, therefore, required to file a Sworn Disclosure of Consulting Services ("form SS-8006") under T.C.A. § 2-10-126?

T.C.A. § 2-10-122(1) states, in part:

"Consulting services" with respect to an official in the legislative branch or an official in the executive branch means services to advise or assist a person or entity in influencing legislative or administrative action, as that term is defined in § 3-6-301, relative to Tennessee state government.

"Consulting services" with respect to an official in the legislative branch or an official in the executive branch also means services to advise or assist a person or entity in maintaining, applying for, soliciting or entering into a contract with the state of Tennessee. . .

T.C.A. § 2-10-126(a) states, in part:

Any staff person or employee of the general assembly; member of a commission established by and responsible to the general assembly or either house of the general assembly . . . who contracts to receive a fee, commission or any other form of compensation for consulting services from a person or entity other than the state, a county or municipality, shall be required to make the same disclosure required by § 2-10-125. . .

According to Ms. James, the company has not contracted with her to advise or assist it with influencing legislative or administrative action, nor to advise or assist it with maintaining, applying for, soliciting or entering into a contract with the state of Tennessee. The company does not otherwise consult with Ms. James or seek her advice. In addition, she states that she does not receive any dividends or compensation from the company other than the rent she receives in her capacity as one of the company's landlords. Accordingly, Ms. James does not provide "consulting services" as that term is defined in T.C.A. § 2-10-122(1), and thus she is not required by T.C.A. § 2-6-126(a) to file a form SS-8006 with the Commission.

(2) Is a company that may contract with the state and in which a legislative employee has a minority share, but who has no management control over the company and receives no salary or fees from the company other than rent, required to file a form SS-8006 under T.C.A. § 2-10-125?

T.C.A. § 2-10-125(a) is a reciprocal provision to T.C.A. § 2-10-126(a). Under § 2-10-125(a), the individual or entity which has contracted with the official to receive consulting services must also file a

form SS-8006. As discussed above, Ms. James does not provide consulting services to her family paving company and is not required under T.C.A. § 2-10-126(a) to file a form SS-8006. Accordingly, her family paving company does not contract with her for consulting services and is therefore not required to file a form SS-8006 under T.C.A. § 2-10-125(a).

CONCLUSION

Under the facts presented by Ms. James, her only affiliation with her family paving business is that of a minority stockholder. Other than rent, she receives no compensation of any type from the company, and she does not provide and has not been asked to provide any advice or assistance with influencing legislative or administrative matters or with maintaining, applying for, soliciting or entering into a contract with the state of Tennessee. Accordingly, Ms. James does not provide “consulting services” under T.C.A. § 2-10-122(1), and she is not required to file a form SS-8006 under T.C.A. § 2-10-126(a), nor is the paving company required to file a form SS-8006 under T.C.A. § 2-10-125(a).

The Commission would advise Ms. James, however, to request a new advisory opinion should her relationship with the company (financial or otherwise), or her services to the company, change in any manner.

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